

AMENDED IN SENATE APRIL 29, 2003

SENATE BILL

No. 399

Introduced by Senator Kuehl

February 20, 2003

An act to amend Sections 6401 and 6402 of the Family Code, relating to foreign protection orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, Kuehl. Foreign protection orders.

Existing law, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, authorizes the enforcement of a valid foreign protection order in a tribunal of this state under certain conditions. Existing law also requires a law enforcement officer of this state to enforce a foreign protection order upon determining that there is probable cause to believe that a valid foreign protection order exists and has been violated.

This bill would expand the definition of protection order by including orders issued under antistalking laws. This bill would remove provisions prohibiting enforcement of a provision of a foreign protection order respecting support *and make a related statement of legislative findings and declarations*. This bill would also make other clarifying changes.

By imposing new duties on local law enforcement officers, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide

and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6401 of the Family Code is amended to
2 read:

3 6401. In this part:

4 (1) “Foreign protection order” means a protection order issued
5 by a tribunal of another state.

6 (2) “Issuing state” means the state whose tribunal issues a
7 protection order.

8 (3) “Mutual foreign protection order” means a foreign
9 protection order that includes provisions in favor of both the
10 protected individual seeking enforcement of the order and the
11 respondent.

12 (4) “Protected individual” means an individual protected by a
13 protection order.

14 (5) “Protection order” means an injunction or other order,
15 issued by a tribunal under the domestic violence , family violence,
16 or antistalking laws of the issuing state, to prevent an individual
17 from engaging in violent or threatening acts against, harassment
18 of, contact or communication with, or physical proximity to,
19 another individual.

20 (6) “Respondent” means the individual against whom
21 enforcement of a protection order is sought.

22 (7) “State” means a state of the United States, the District of
23 Columbia, Puerto Rico, the United States Virgin Islands, or any
24 territory or insular possession subject to the jurisdiction of the
25 United States. The term includes an Indian tribe or band, or any
26 branch of the United States military, that has jurisdiction to issue
27 protection orders.

28 (8) “Tribunal” means a court, agency, or other entity
29 authorized by law to issue or modify a protection order.



1 SEC. 2. Section 6402 of the Family Code is amended to read:

2 6402. (a) A person authorized by the law of this state to seek
3 enforcement of a protection order may seek enforcement of a valid
4 foreign protection order in a tribunal of this state. The tribunal
5 shall enforce the terms of the order, including terms that provide
6 relief that a tribunal of this state would lack power to provide but
7 for this section. The tribunal shall enforce the order, whether the
8 order was obtained by independent action or in another
9 proceeding, if it is an order issued in response to a complaint,
10 petition, or motion filed by or on behalf of an individual seeking
11 protection. In a proceeding to enforce a foreign protection order,
12 the tribunal shall follow the procedures of this state for the
13 enforcement of protection orders.

14 (b) A tribunal of this state may not enforce a foreign protection
15 order issued by a tribunal of a state that does not recognize the
16 standing of a protected individual to seek enforcement of the order.

17 (c) A tribunal of this state shall enforce the provisions of a valid
18 foreign protection order which govern custody and visitation, if
19 the order was issued in accordance with the jurisdictional
20 requirements governing the issuance of custody and visitation
21 orders in the issuing state.

22 (d) A foreign protection order is valid if it meets all of the
23 following criteria:

24 (1) Identifies the protected individual and the respondent.

25 (2) Is currently in effect.

26 (3) Was issued by a tribunal that had jurisdiction over the
27 parties and subject matter under the law of the issuing state.

28 (4) Was issued after the respondent was given reasonable
29 notice and had an opportunity to be heard before the tribunal issued
30 the order or, in the case of an order ex parte, the respondent was
31 given notice and has had or will have an opportunity to be heard
32 within a reasonable time after the order was issued, in a manner
33 consistent with the rights of the respondent to due process.

34 (e) A foreign protection order valid on its face is prima facie
35 evidence of its validity.

36 (f) Absence of any of the criteria for validity of a foreign
37 protection order is an affirmative defense in an action seeking
38 enforcement of the order.

(g) A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if both of the following are true:

(1) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state.

(2) The tribunal of the issuing state made specific findings in favor of the respondent.

SEC. 3. *The Legislature finds and declares that the changes made by this act that delete the current subdivision (d) of Section 6402 of the Family Code are not intended to make a change in, but are declaratory of, existing law. Under existing law, support orders are enforced pursuant to the Uniform Interstate Family Support Act (Chapter 6 (commencing with Section 4900) of Part 5 of Division 9 of the Family Code). Because Section 6402 of the Family Code relates to protection orders, the Legislature further finds and declares that the reference to support orders in subdivision (d) of that provision is inappropriate and does not comport with the intent of the Legislature.*

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.